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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on 30th July, 1987:—

BILL No. 63 OF 1987

A Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1987.

Short title
and
commence-
ment.

(2) It shall be deemed to have come into force on the 2nd day of July, 1987.

52 of 1974

2. In the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the principal Act), in section 9, in sub-section (1),—

Amend-
ment of
section 9.

(a) for the figures, letters and words “31st day of July, 1987”, the figures, letters and words “31st day of July, 1990” shall be substituted;

(b) in Explanation 1, in clauses (i) and (ii), for the words “the States of Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu

and the Union territories of Goa, Daman and Diu and Pondicherry", the words "the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Daman and Diu and Pondicherry" shall be substituted.

Repeal
and
saving.

3. (1) The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1987 is hereby repealed.

Ord. 4 of
1987.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention of persons in certain cases for the purposes of conservation and augmentation of foreign exchange and for prevention of smuggling activities.

2. Section 9 of the Act deals with the detention of any person who is engaged in smuggling activities in areas highly vulnerable to smuggling and such areas have been indicated in the section itself. Under the provisions of this section, detentions made for activities committed in such areas can be up to a maximum period of two years if a declaration is made under that section while for detentions for such activities committed in other areas, the maximum period of detention under the Act will be for a period of one year only. This section, however, could apply only in respect of detention orders made before the 31st of July, 1987. A comparative analysis of the figures in regard to seizures of contraband goods effected in the said highly vulnerable areas during the last three years had revealed that the menace of smuggling has not abated in any way in the said areas. The longer period of detention for a period of two years under this section has, however, proved to be a deterrent effect on these smugglers and this provision had also been effectively used in combating smuggling activities in these highly vulnerable areas. It was, therefore, considered necessary to continue the provisions of this section even in respect of detention orders which may be passed after 31-7-1987. Accordingly, the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1987 was promulgated by the President on the 2nd July, 1987 to continue the provisions of section 9 of the Act for a further period of three years beyond 31st July, 1987.

3. This Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 14th July, 1987.

BRAHM DUTT.

BILL No. 64 OF 1987

A Bill to amend the Air (Prevention and Control of Pollution) Act, 1981.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short
title
and
com-
mence-
ment.

1. (1) This Act may be called the Air (Prevention and Control of Pollution) Amendment Act, 1987.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of this Act.

Amend-
ment of
section 2.

2. In section 2 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the principal Act),—

14 of 1981.

(i) in clause (a), after the words “gaseous substance”, the brackets and words “(including noise)” shall be inserted;

(ii) in clause (g), for the words “Central Board for the Prevention and Control of Water Pollution”, the words “Central Pollution Control Board” shall be substituted;

(iii) for clause (m), the following clause shall be substituted, namely:—

‘(m) “occupier”, in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;’;

(iv) in clause (o), in sub-clause (i), for the words “State Board for the Prevention and Control of Water Pollution”, the words “State Pollution Control Board” shall be substituted.

3. For sections 3 and 4 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 3 and 4.

Central Pollution Control Board.

6 of 1974.

“3. The Central Pollution Control Board constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974, shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the Central Pollution Control Board for the prevention and control of air pollution under this Act.

4. In any State in which the Water (Prevention and Control of Pollution) Act, 1974, is in force and the State Government has constituted for that State a State Pollution Control Board under section 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under section 5 of this Act, and accordingly that State Pollution Control Board shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under this Act.”

State Pollution Control Boards constituted under section 4 of Act 6 of 1974. to be State Boards under this Act.

4. In section 5 of the principal Act,—

Amendment of section 5.

(i) in sub-section (1), for the words “State Board for the Prevention and Control of Water Pollution”, the words “State Pollution Control Board” shall be substituted;

(ii) in sub-section (2), for clause (f), the following clause shall be substituted, namely:—

“(f) a full-time member-secretary having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Government:”.

5. In sub-section (6) of section 7 of the principal Act, the words “but not for more than two terms” shall be omitted.

Amendment of section 7.

Amend-
ment of
section
14.

6. In section 14 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The member-secretary of a State Board, whether constituted under this Act or not, shall exercise such powers and perform such duties as may be prescribed, or as may, from time to time, be delegated to him by the State Board or its Chairman.”.

Amend-
ment of
sec-
tion 16.

7. In sub-section (2) of section 16 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(dd) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18;”.

Amend-
ment of
section
18.

8. Section 18 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

“(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area, for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.”.

Amend-
ment of
section
21.

9. In section 21 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:—

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for

such consent within the said period of three months, till the disposal of such application.”;

(ii) in the proviso to sub-section (2), the words “for the purpose of any industry specified in the Schedule” shall be omitted;

(iii) in sub-section (4),—

(a) for the words “either grant or refuse, for reasons to be recorded in the order, the consent applied for”, the words “and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent” shall be substituted;

(b) the following provisos shall be inserted at the end, namely:—

“Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before a consent has been cancelled or a further consent has been refused under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.”;

(iv) in the first proviso to sub-section (5), the words “for the purpose of any industry specified in the Schedule” shall be omitted;

10. In section 22 of the principal Act, the words “carrying on any industry specified in the Schedule or” shall be omitted.

11. After section 22 of the principal Act, the following section shall be inserted, namely:—

“22A. (1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17, is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining such person from emitting such air pollutant.

(2) On receipt of the application under sub-section (1), the court may make such order as it deems fit.

(3) Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order,—

(a) direct such person to desist from taking such action as is likely to cause emission;

(b) authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is

Amendment of section 22.

Insertion of new section 22A.

Power of Board to make application to court for restraining persons from causing air pollution.

issued, to implement the direction in such manner as may be specified by the court.

(4) All expenses incurred by the Board in implementing the directions of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand.”.

Amend-
ment of
section 23.

12. In section 23 of the principal Act, in sub-section (1), the words “air pollution control” shall be omitted.

Amend-
ment of
section 24.

13. In section 24 of the principal Act, in sub-section (2), the words “carrying on any industry specified in the Schedule and every person” shall be omitted.

Insertion
of new
section
31A.

14. In Chapter IV of the principal Act, after section 31, the following section shall be inserted, namely:—

Power to
give
direc-
tions.

“31A. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.”.

Amend-
ment of
sections 32,
33 and 49.

15. In the proviso to section 32, in sub-section (3) of section 33 and in section 49 of the principal Act, for the words “State Board for the Prevention and Control of Water Pollution”, wherever they occur, the words “State Pollution Control Board” shall be substituted.

Insertion
of new
section 33A.

16. After section 33 of the principal Act, the following section shall be inserted, namely:—

Borrow-
ing
powers
of Board.

“33A. A Board may, with the consent of, or in accordance with the terms of any general or special authority given to it by, the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for discharging all or any of its functions under this Act.”.

Substitu-
tion of
new sec-
tion for
section 35.

17. For section 35 of the principal Act, the following section shall be substituted, namely:—

Annual
report.

“35. (1) The Central Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving

full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the Central Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before both Houses of Parliament within nine months of the last date of the previous financial year.

(2) Every State Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the State Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before the State Legislature within a period of nine months from the last date of the previous financial year.”.

18. For section 37 of the principal Act, the following section shall be substituted, namely:—

“37. (1) Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.”.

19. In section 38 of the principal Act, for the words “five hundred rupees”, the words “ten thousand rupees” shall be substituted.

20. For section 39 of the principal Act, the following section shall be substituted, namely:—

“39. Whoever contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which

Substitution of new section for section 37.

Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.

Amendment of section 38.

Substitution of new section for section 39.

Penalty for contravention of certain provisions of the Act.

such contravention continues after conviction for the first such contravention.”.

Substitution of new section for section 43.

21. For section 43 of the principal Act, the following section shall be substituted, namely:—

Cognizance of offences.

“43. (1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid,

and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.”.

Omission of section 50.

22. Section 50 of the principal Act shall be omitted.

Amendment of section 53.

23. In section 53 of the principal Act, in sub-section (1), for clause (f), the following clauses shall be substituted, namely:—

“(f) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under section 34;

(ff) the form in which the annual report of the Central Board may be prepared under section 35;”.

Amendment of section 54.

24. In section 54 of the principal Act,—

(a) in sub-section (2),—

(i) clause (a) shall be renumbered as clause (aa), and before clause (aa) as so renumbered, the following clause shall be inserted namely:—

“(a) the qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control required for appointment as member-secretary of a State Board constituted under the Act;”;

(ii) for clause (w), the following clauses shall be substituted, namely:—

“(w) the form in which and the time within which the budget of the State Board may be prepared and forwarded to the State Government under section 34;

(ww) the form in which the annual report of the State Board may be prepared under section 35;”;

(iii) after clause (x), the following clause shall be inserted, namely:—

“(xx) the manner in which notice of intention to make a complaint shall be given under section 43;”;

(b) in sub-section (3), for the words, brackets and letter “in clause (a)”, the words, brackets and letters “in clause (aa)” shall be substituted.

25. The Schedule to the principal Act shall be omitted.

Omission of
the
Schedule.

STATEMENT OF OBJECTS AND REASONS

The Air (Prevention and Control of Pollution) Act, 1981 was enacted under article 253 of the Constitution to implement the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972, in which India participated.

2. The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and have brought these to the notice of Government. The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Governments and the Central and State Boards. Taking into account the views expressed, Government have decided to make certain amendments to the Act in order to remove such difficulties.

3. The Bill, *inter alia*, seeks to make the following amendments in the Act, namely:—

(i) The Central Board is proposed to be empowered to exercise the powers and perform the functions of a State Board in specific situations, particularly when a State Board fails to act and comply with the directions issued by the Central Board. It is also proposed to recover the cost of the exercise of such powers and the performance of such functions by the Central Board from the person or persons concerned, if the State Board is empowered to recover such costs under the provisions of the Act, as arrears of land revenue or of public demand.

(ii) It is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board even while establishing an industrial plant.

(iii) It is proposed to empower the Boards to obtain information regarding discharge of pollution in excess of specified standards by the industries operating even outside the air pollution control areas.

(iv) In order to prevent effectively air pollution, the punishments provided in the Act are proposed to be made stricter.

(v) In order to elicit public cooperation, it is proposed that any person should be able to complain to the courts regarding violations of the provisions of the Act after giving a notice of sixty days to the Board or the officer authorised in this behalf.

(vi) It is proposed to omit the Schedule to the Act so as to make the Act applicable to all the industries causing air pollution.

(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishments or stoppage or regulation of supply of services such as, water and electricity.

(viii) It is proposed to empower the Boards to approach courts to pass orders restraining any person from causing air pollution.

(ix) For increasing the financial resources of the Boards, it is proposed to empower them to raise monies by means of obtaining loans and issue of debentures.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

BHAJAN LAL.

The 15th July, 1987.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill seeks to amend section 54 to empower the State Government to prescribe qualifications, knowledge and experience of scientific, engineering or management aspects of the pollution control for appointment of a full-time member-secretary of the State Board under clause (f) of sub-section (2) of section 5 and it further empowers the State Government to provide for the manner in which the notice of intention to make a complaint shall be given under new section 43 as substituted by the Bill.

2. These matters pertain to the procedure, form or administrative detail. As such, the delegation of legislative power is of a normal character.

SUBHASH C. KASHYAP,
Secretary-General.